In making the over-issue the county court, or its committee, acted beyond the scope of its agency, and outside of the power given by the legislature. The only way in which the people could ratify it would be by a vote under a legislative enactment.

It is argued by counsel for the appellant (the county court) that there is no reason to discriminate between the holders of these bonds on account of the date of the purchase, and that there is no means of determining which of them are valid and which are not. This question cannot well arise between the county court and the tax-payer, and as there has been an excessive issue, the county court cannot complain of the injunction. It does not appear who has possession of the bonds. It is alleged that they were delivered or sold to the corporation, the railroad company. It was made a party defendant, and does not ask to have any equitable distribution of the fund, or to disclose even to whom it has transferred these bonds. The judgment below enjoining the county court from proceeding to collect the over-issue of bonds or the interest, by levying a tax upon the property of the appellees, is affirmed, and the cross-appeal of the appellees dismissed without prejudice.

RECENT ENGLISH DECISIONS (CONDENSED).

Court of Appeal in Chancery.

EAGLESFIELD v. MARQUIS OF LONDONDERRY.

The L. Railway Company was authorized by its acts of incorporation to issue 190,000*l*. preference shares and a large amount of ordinary shares. In 1864 it was amalgamated by Act of Parliament with the Cambrian Company, up to which time it had issued 85,000*l*. preference shares, which ranked as No. 1 preference stock, and 60 000*l*. ordinary shares, which ranked as No. 2 preference stock, and power was reserved to the Cambrian Company, to raise any capital which either of the amalgamated companies had power to raise prior to the amalgamation. The directors of the amalgamated company, under a bonâ fide belief that they were authorized to raise 15,000*l*. additional preference shares of the L. Company, and to make them rank with the 85,000*l*. No. 1 preference stock, issued 15,000*l*. shares of preference stock, and described them as No. 1 preference stock in the certificates, which were signed by the directors and the secretary, and which were handed to the plaintiff at the time he purchased some of the stock. It was subsequently decided that the new stock was not No. 1 preference stock, but ranked below it. *Held*, that the purchaser had not been deceived by any misrepresentation of fact, and his bill was dismissed.

THIS bill was filed in 1874, alleging that the plaintiff had been

[1] 4 Chan. Div. 693–718.

deceived by the form in which the stock had been issued and the certificates made, as set forth in the syllabus, and praying that the company, the directors, and the secretary, all of whom were made defendants, might be held responsible jointly and severally for the misrepresentation.

For the plaintiffs it was argued that the defendants were jointly and severally liable for the loss occasioned to the plaintiffs by the untrue representation contained in the certificate, that the stock purchased was preference stock. The bona fides of a false representation made no difference; citing *In re Bahia & San Francisco Railway Co.*, Law Rep. 3 Q. B. 584; *Burrowes* v. *Lock*, 10 Ves. 470; *Slim* v. *Crougher*, 1 D. F. & J. 518; *Reese River Silver Mining Co.* v. *Smith*, Law Rep. 4 H. L. 64; *Peek* v. *Gurney*, Id. 6 H. L. 377; *Ship* v. *Crosskill*, Id. 10 Eq. 73; *Swift* v. *Winterbotham*, Id. 8 Q. B. 244; *Pickard* v. *Sears*, 6 A. & E. 469; *Freeman* v. *Cooke*, 2 Ex. 654.

For the defendants it was argued that the misrepresentation was one of law, being occasioned by the erroneous construction put by the directors upon the Acts of Parliament authorizing the issue of stock; hence defendants were not accountable: *Beattie* v. *Lord Ebury*, Law Rep. 7 H. L. 102. But assuming that there was a misrepresentation of fact, there was no evidence that the plaintiffs acted upon the directors' misrepresentation; the directors would not be liable in an action of deceit: *Swift* v. *Jewsbury*, Law Rep. 9 Q. B. 301; *Rashdall* v. *Ford*, Id. 2 Eq. 750.

The Master of the Rolls, Sir G. Jessel, made a decree for the complainant, from which this appeal was taken. On appeal the following cases were cited in addition: *Hart* v. *Frontino Gold Mining Co.*, Law Rep. 5 Ex. 111; *Henderson* v. *Lacon*, Id. 5 Eq. 249; *Scott* v. *Dixon*, 29 L. J. (Ex.) 62 n.; *Barry* v. *Croskey*, 2 J. & H. 1; *Mackey* v. *Commercial Bank of New Brunswick*, Law Rep. 5 P. C. 394; *New Brunswick Railway Co.* v. *Conybarre*, 9 H. L. C. 711; *Haycraft* v. *Creasy*, 2 East 92; *Ormrod* v. *Huth*, 14 M. & W. 651; *Stephens* v. *DeMedina*, 4 Q. B. 422; *Western Bank of Scotland* v. *Addie*, Law Rep. 1 H. L. Sc. 145; *Barwick* v. *English Joint Stock Bank*, Law Rep. 2 Ex. 259.

James, L. J., said that the appeal must be allowed, since the plaintiff had not shown that he relied upon the misrepresentation. The whole misrepresentation consisted of this, that the vendor of

the stock sold it to the plaintiff, and a transfer was then sent to the company of "10,000*l.* of 5 per cent. preference stock No. 1," and across the certificate was written by the secretary, by authority of the directors, "coupons for 10,000*l.* preference stock, forwarded to the companies by (the vendor) are held by me to meet this transfer." The representation was meant to apply to the stock of 15,000*l.* issued to the Cambrian Company. The misrepresentation to sustain the bill must be wilful and fraudulent; this was not the case here, nor had the plaintiff shown that he had relied upon and been deceived by the misrepresentation. The certificate did not say that the stock transferred was part of the 85,000*l.* stock, nor did the plaintiff allege that he so believed, he merely alleged that he believed that he was getting genuine No. 1 stock; but he might have believed that the stock was part of the 15,000*l.* issued, and yet that it was genuiue No. 1 preference stock, that is, that it ranked equal to the 85,000*l.* issued. Then he had delayed filing his bill from 1869, when he was informed of the probability that his stock was not genuine No. 1 stock, till 1874; that alone would be decisive against him.

BAGGALLAY, J. A., and BRAMWELL, J. A., concurred.

Appeal allowed and bill dismissed with costs.

Court of Appeal in Chancery.

MASTER v. HANSARD.[1]

Where a personal covenant is made by a tenant not to build without the landlord's approval, a subsequent lessee of the same landlord of an adjoining plot cannot compel the landlord to enforce for his benefit the covenant with the first tenant.

THE owner of two adjoining plots of land leased one for a term to A., and subsequently the other for a term to B. A. and B. at the time of their respective leases, covenanted respectively that they would not during the term do on the demised premises anything which would be an annoyance to the lessor and his tenants, or build on the ground demised, without first submitting the plans to the lessor, and obtaining his approval. Within twenty years A., with the approval of the lessor, began to build upon his ground, so as to darken B.'s windows. B. filed a bill to restrain A. from erecting, and the lessor from approving the building objected to.

---

[1] 4 Chan. Div. 718–724.